

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, September 1, 2000

Division One

**A089280 -- In re Kathryn K., et al., Persons Coming Under the
Juvenile Court Law, Social Services Agency v. Joseph R.**

By the Court: Time having elapsed for this court to act on appellant's request to file untimely petition for rehearing, said request is denied. Marchiano, Acting P.J.

A084397 and A084160 -- Christopher Meyer, et al. v. Joan Targ.

By the Court: Appellants' petition for rehearing, filed August 25, 2000, is denied. At the conclusion of the trial of the legal issues in the action, the trial court retains its discretion to consider attorney's fees and whether the prevailing party in that trial is entitled to a setoff. Marchiano, Acting P.J.

Division Four

A087502 -- The People v. Aondray Peoples.

The judgment is affirmed. Hanlon, P.J. We Concur: Poché, J., Sepulveda, J. (Not for Publication.)

A083933 -- The People v. Ronald Dale Jolly.

The judgment is affirmed. Hanlon, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Tuesday, September 5, 2000

Division One

A086700 -- The People v. Alfredo Razo.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

Division Three

A087982 -- John H. Rohan & Associates, Inc., et al. v. Pacific Gas & Electric Company.

The judgment is reversed and the matter is remanded to the trial court to permit PG&E to bring a motion to amend the answer to properly allege the statute of limitations defense. If the trial court grants that motion, the court may again entertain the motion for summary judgment and take further action consistent with the views expressed in this opinion. The parties shall bear their own costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

Division Four

A086443 -- Susan Au-Yang v. United Parcel Service.

The judgment is affirmed. In the interests of justice each party shall bear its own costs on appeal. Poché, Acting P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A088835 -- In re Mike H., a Person Coming Under the Juvenile Court Law. The order is affirmed. Poché, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

A090385 -- The People v. Nathaniel Powell.

The judgment is affirmed. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, September 5, 2000 (continued)

A087263 -- The People v. Eliseo Ramirez.

The judgment is affirmed. Poché, Acting P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A089234 and A091060 -- In re Joshua F., et al., Persons Coming Under the Juvenile Court Law; Social Services Agency v. Vernon F.

By the Court: On the court's own motion the appeals in A089234 and A091060 are ordered consolidated for purposes of briefing, argument, and decision. The briefing heretofore filed in A089234 shall be deemed filed in A091060. The respondent's brief and appellant's reply brief, remaining to be filed in A091060, shall be limited to issues not raised in A089234. Jones, P.J.

A090036 -- In re Ashley V. et al., Persons Coming Under the Juvenile Court Law; Contra Costa County Department of Social Services v. Laurie R.

The order terminating parental rights is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, September 6, 2000

Division Two

A088855 -- The People v. Orval Dean Harty.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Lambden, J.
(Not for Publication.)

A087921 -- The People v. William G. Pampell.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J, Ruvolo, J.
(Not for Publication.)

A086639 -- The People v. Gary I. Valentine.

The judgment is modified to award 321 days of actual custody credits and 160 days of conduct credits, for a total of 481 days of presentence credits. We remand this matter, and direct the clerk of the superior court to prepare and deliver to the Department of Corrections an amended abstract of judgment consistent with this opinion. In all other respects, the judgment is affirmed. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

Wednesday, September 6, 2000 (continued)

Division Three

A087163 -- Sherry Mason et al. v. Owen Brady.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion on the issues of actual economic damages and attorney fees on appeal. Respondent is ordered to pay appellants' costs on this appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A091415 -- Thomas J. Holterhoff v. The Superior Court of Alameda County; Tasha, Inc., et al., R.P.I.

Therefore, let a peremptory writ of mandate issue commanding the Superior Court of Alameda County to modify its order filed March 30, 2000, as follows: vacate its order that the arbitrator shall decide the arbitrability of plaintiff's Labor Code claims; and to issue a new order setting a hearing before the superior court on or before October 6, 2000, in order to allow the court to make a determination as to the arbitrability of the plaintiff's claims as set forth in his complaint and, in light of that determination, to make further orders pursuant to Code of Civil Procedure section 1281.2, if necessary.

Real parties in interest shall bear the costs of this proceeding. This opinion is final as to this court immediately. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

A089221 -- In re Tiara J., a Person Coming Under the Juvenile Court Law.

The order of commitment is affirmed. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Wednesday, September 6, 2000 (continued)

Division Five

A088356/A090668 -- In re Foley C., a Person Coming Under the Juvenile Court Law.

The orders appealed from are affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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A083530 -- San Remo Hotel, et al. v. City and County of San Francisco et al.

Order Modifying Opinion and denying rehearing.

By the Court: The request for publication of the unpublished portion of the opinion which was filed August 8, 2000 is granted. The opinion is certified for publication in its entirety, and it is therefore ordered that it be published in the Official Reports. The petition for rehearing is denied. This modification does not effect a change in the judgment. Jones, P.J. (Certified for Publication.)

Thursday, September 7, 2000

Division Five

**A087278 -- In re the Marriage of Nabawia Mohamed Soliman and
Sobhi Mohamed Sobhi.**

Nabawia Mohamed Soliman v. Sobhi Mohamed Sobhi.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.*
(Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice
pursuant to article VI, section 6 of the California Constitution.

Friday, September 8, 2000

Division One

**A092120 -- City of Fremont v. The Superior Court of Alameda County;
Salim G., a minor, R.P.I.**

The Court:* (SEE ORDER). Therefore, let a peremptory writ of prohibition issue commanding respondent Alameda County Superior Court, Juvenile Division, to take no further action on the minor's "*Pitchess* Discovery Motion" in In re Salim G. (No. 179728) other than to deny the motion in its entirety.

The stay previously imposed shall remain in effect until the remittitur issues. (Cal. Rules of Court, rule 25(a).) This opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) (Not for Publication.)

*Before Strankman, P.J., Swager, J., and Marchiano, J.

Friday, September 8, 2000

Division Two

A088628 -- In re Brianna A. et al., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A090823 -- Lafayette Turner v. Margaret J. Kemp et al.

The motion to dismiss is granted. This moots respondents' request for further time in which to file a respondent's brief. The appeal is dismissed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Five

A089141 -- American Builders & Contractors Supply Co., Inc., et al. v. Richard J. Bishop.

The judgment is reversed. Appellant shall recover their costs on appeal. Stevens, J. We Concur: Jones, P.J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A087702 -- The People v. Emanuel McLemore.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, September 11, 2000

Division One

A079943 -- The People v. James Edward King.

By the Court: The petition for rehearing is denied. Swager, Acting P.J.

Division Four

A079638 -- H. Roger Lawler v. Justin M. Jacobs, Jr., et al.

We reverse the judgment in favor of Lawler on his complaint, but affirm in his favor on the cross-complaint. Parties to bear their own costs on appeal.

Reardon, J. We Concur: Poché, Acting P.J., Sepulveda, J. (Certified for Partial Publication.)

Division Five

A088766 -- The People v. Carl Bowie.

The judgment is affirmed. Rivera, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A089279 -- In re Lawrence E., a Person Coming Under the Juvenile Court Law, People v. Lawrence E.

The order adjudicating appellant a ward of the court pursuant to Welfare and Institutions Code section 602 and committing him to Byron Boys Ranch is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, September 11, 2000 (continued)

A089460 -- Paul C. Hudson v. Charles Jarvis Murray.

The judgment is affirmed. Defendant's request for sanctions is denied. Costs to respondent. Rivera, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A087790 -- In re Jose R., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Rivera, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, September 12, 2000

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J., and Reardon, J.; Channing Hoo, Deputy Clerk; Jason Keirse, Bailiff.

A084024 Spanish Speaking Citizens' Foundation, Inc. et al.

A085376

v.

Chuck Quackenbush et al.

Causes called. Marguerite Stricklin, Vanessa Wells, and Steven H. Weinstein argued for appellants Quackenbush et al. Mark Savage argued for respondents. Causes submitted.

A083792 Perrin Edgerton

v.

Department of Transportation

Cause called. Chris Thomas appellant Department. Philip C. Monrad argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Hanlon, P.J., Reardon, J. and Sepulveda, J.

A089450 Julianne Major v. Tibor Major

A089459 Amanda Major v. Tibor Major

Causes called. Ipp appellant Tibor Major, Esq. argued. Lawrence Moskowitz argued for respondent Julianne Major only. Causes submitted.

A086533 Charles Cuda v. General Insurance Company

A087375 Charles Cuda v. Applied Risk Management

Causes called. Gerald R. Welch argued for appellant Cuda. Gregory Brown and Richard M. McNeely argued for respondents. Causes submitted.

The Court recessed at 12:25 p.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, September 12, 2000

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J.; Reardon, J. and Sepulveda, J.; Pamela Aguilar, Deputy Clerk; Shelley Aldridge, Bailiff.

The Court paid tribute to Associate Justice Marcel B. Poche, who will be retiring from the bench as of October 1, 2000, after 21 years of service with this court.

At his point, the court reconstitutes itself to include Poche, Acting P.J., Reardon, J. and Sepulveda, J.

A087476 People v. Superior Court of San Francisco
A087476 People v. Ruben Jackson Johnson
Causes called. Juliet Haley appeared for petitioner/appellant People. Christopher Gauger argued for respondent. Causes submitted.

At this point, the court reconstitutes itself to include Hanlon, P.J., Reardon, J. and Sepulveda, J.

A085476 Daniel Cervantes, et al.
v.
Pacific, Gas & Electric
Cause called. Michael Treza argued for appellants. Maureen L. Fries argued for respondent. Cause submitted.

At this point, the court reconstitutes itself to include Hanlon, P.J., Poche, J. and Reardon, J.

A084310 People v. Charles Anderson Miller
A089767 In re Charles Anderson Miller on Habeas Corpus
Causes called. Ross Thomas argued for appellant/petitioner Miller. Bruce Ortega argued for respondent. Causes submitted.

A89271 Estate of John Alexander Clark, Deceased
Thomas McDonough v. Ivan McDowell
Cause called. John Schuck argued for appellant McDowell. Mark Hudak teleargued for respondent. Cause submitted.

A089699 Bay Area Realty
v.
Bank of San Francisco Realty Investors
Cause called. Diane L. Gibson argued for appellant Bank of San Francisco Realty Investors. Linda L. Mallette argued for respondent. Cause submitted.

A083797 People
v.
Thomas Lester Stark
Cause called. Guy A. Campisano argued for appellant Stark. John Deist argued for respondent. Cause submitted.

At this point, the court reconstitutes itself to include Hanlon, P.J., Poche, J. and Sepulveda, J.

A085733 People
v.
Robert Derwin Avery
Cause called. Randy R. Baker argued for appellant Avery. Nanette Winaker argued for respondent. Cause submitted.

A087654 Wesley Burwell, Jr.
v.
Bruce R. MacDonald et al.
Cause called. Larry Shockey argued for appellant Burwell. Bernard Cotter argued for respondent. Cause submitted.

The Court adjourned at 4:40 p.m.

Tuesday, September 12, 2000

Division Two

A085830 -- The People v. George Reynold Armstrong.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A083461 -- In re Marriage of Nila Cardenas and Joselito R. Cardenas.

The judgment (order) is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A089800 -- The People v. Jose Lucas Lopez.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Five

A089952 -- In re Antoine C., a Person Coming Under the Juvenile Court Law.

The People v. Antoine C.

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A087931 -- The People v. Ricky Lazenby.

The simple kidnapping convictions, counts 3, 9, 16, 21, 30, are reversed. Sentence on counts 4, 10, 14, 17, and 22 is stayed. The abstract of judgment is ordered modified to state that count 18 is a conviction of sections 261, subdivision (a)(2), and 664, and counts 19 and 29 are convictions of former section 208, subdivision (d). The matter is remanded with directions to prepare and forward to the Department of Corrections a corrected abstract of judgment. In all other respects the judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, September 13, 2000

Division Two

A086143 -- Williams Dawson v. California Department of Insurance, et al., Allstate Insurance Company, et al. R.P.I.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A091959 -- Brenda H. v. The Superior Court of Solano County; Solano County Health & Social Services Department, R.P.I.

A091960 -- Sherman A. v. The Superior Court of Solano County; Solano County Health & Social Services Department, R.P.I.

The petition for extraordinary relief is denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 893-895 [written opinion on petition for extraordinary relief precludes reconsideration of or further challenge to orders in any subsequent appeal].) Because the section 366.26 hearing is set for September 14, 2000, our opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24(d).) McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A091573 -- Rebecca A. v. The Superior Court of Humboldt County, Humboldt County Department of Social Services.

The petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (l); Cal. Rules of Court, rule 39.1B(o); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) The request for a stay of the order terminating reunification services is denied. The request for a stay of the permanency planning hearing is denied as moot. As the hearing is set for October 10, 2000, our decision is final in this court immediately. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, September 13, 2000

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: Corrigan J., Parrilli J., Walker, J., and C. Turner, Deputy Clerk.

A086313 Congregation Beth Israel-Judea,
 v.
 George R. Karadanis, et al.
 Cause called and argued by Michael G. Thomas, counsel for appellant, and
 Tiffany Rystrom, counsel for respondent. Cause ordered submitted.

A086653 The People,
 v.
 John Paul Jacobs.

A090336 In re John Paul Jacobs on Habeas Corpus.
 Cause called and case was ordered continued to September 27, 2000, calendar
 due to medical emergency.

A085328 The People,
 v.
 Kevis J. Halphen
 Cause called and argued by Gregory W. Brown, counsel for appellant, and Amy
 Haddix, counsel for respondent. Cause ordered submitted.
 court adjourned

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Thursday, September 14, 2000

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., Swager, J., and Marchiano, J.; N. Millner, Deputy Clerk; and CHP Officer S. Aldridge, Bailiff.

Justice Stein did not participate in argument of the first case.

A088909 The People,
 v.
 Lee Stewart.
Cause called and argued by A. Charles Dell’Ario, counsel for appellant, and Allan Yannow, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Swager left the bench and Justice Stein participated in argument of the remaining cases.

A090074 Mary O’Toole,
 v.
 San Mateo County General Hospital, et al.
Cause called and argued by Bruce A. Bailey, counsel for appellant, and Thomas E. Still and Kathleen J. Moorhead, counsel for respondents. Cause ordered submitted.

A086251 Victoria King, et al.,
 v.
 Alta Bates Medical Center.
Cause called and argued by Allan Rees and Victoria King, appellants in pro per, and Lisa R. Jaskol, counsel for respondent. Cause ordered submitted.

A086147 H. Lee Evans,
 v.
 Reliance National Insurance Company.
Cause called and argued by Elizabeth Williams, counsel for appellant, and Robert A. Lewis, counsel for respondent. Cause ordered submitted.

A086925 Citicorp North America, Inc. & Affiliates,
 v.

Franchise Tax Board.

Cause called and argued by Eric J. Coffill, counsel for appellant, and David Lew, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Thursday, September 14, 2000

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and CHP Officer J. Keirse, Bailiff.

- A086536 The People,
 v.
 Michael Dixon.
Cause called and argued by Neil J. Rosenbaum, counsel for appellant, and John Vance, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A088684 Lydia Camerino,
 v.
 Foodmaker, Inc., et al.
Cause called and argued by Kevin B. Kevorkian, counsel for appellant, and Stephan C. Williams, counsel for respondent. Cause ordered submitted.
- At this point in the proceedings, Justice Marchiano left the bench and Justice Stein joined the bench.
- A088014 The Big Creek Timber Company,
 v.
 Sempervirens Fund.
Cause called and argued by Kent G. Washburn, counsel for appellant, and Phillip Wang, counsel for respondent. Cause ordered submitted.
- A089826 Council for Private Postsecondary and Vocational Education, et al.,
 v.
 Columbia Pacific University, et al.
Cause called and argued by Orrin L. Grover, counsel for appellants, and Asher Rubin, Deputy Attorney General, counsel for respondents. Cause ordered submitted.
- A087308 Ilene Listrom,
 v.
 Columbia San Leandro Hospital, et al.
Cause called and argued by Stephen W. Parrish, counsel for appellants, and Philip

Borowsky, counsel for respondent. Cause ordered submitted.

A085506

Denise Hale, et al.

v.

Prentis Cobb Hale, III,

Cause called and argued by Albert J. Boro, Jr., counsel for appellants, and Hillel Chodos, counsel for respondent. Cause ordered submitted.

Court recessed until Friday, September 15, 2000 at 9:00 a.m.

Thursday, September 14, 2000

Division Two

A090162 -- Planned Parenthood Golden Gate v. The Superior Court of San Mateo County.

By the Court: It is ordered that the opinion filed herein on August 28, 2000, be modified in the following Particular: (SEE ORDER). This modification does not effect a change in the judgment. The petition for rehearing and request for depublication are denied. Kline, P.J. (Certified for Publication.)

A089168 -- The People v. Dorian Redus.

The order extending commitment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A090200 -- The People v. Michael Lawrence Evans.

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

A090521 -- The People v. Eric Duane Riggs.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

Division Four

A086959 -- The People v. Samuel David Allen.

The order of commitment is affirmed. Reardon, J. I Concur: Hanlon, P.J. (See Concurring Opinion by Sepulveda, J.) (Not for Publication.)

A089699 -- Bay Area Realty v. Bank of San Francisco Realty Investors.

The trial court properly entered summary judgment for Broker on the breach of contract cause of action. Accordingly, we affirm the judgment and the award of attorney fees. Reardon, J. We Concur: Hanlon, P.J., Poché, J. (Not for Publication.)

Thursday, September 14, 2000 (continued)

A086725 -- David DeZerega et al. v. Jason Meggs.

Order Denying Rehearing and Modifying Opinion [No Change in Judgment] By the Court: Plaintiffs' petition for rehearing is denied. The opinion heretofore filed is modified as follows: (SEE ORDER). The above modification does not effect any change in the judgment. Hanlon, P.J. (Certified for Publication.)

Division Five

A089729 -- Iosefa T. Save v. Department of Motor Vehicles.

The order is reversed. On remand the trial court is directed to issue a writ of administrative mandate ordering the DMV to set aside its suspension order and rehear the matter. Costs to the DMV. Rivera, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Friday, September 15, 2000

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and CHP Officer T. Tam, Bailiff.

- A087479 The People,
 v.
 Jose Zuniga.
Cause called and argued by George C. Boisseau, attorney for appellant, and Thomas Brady, Deputy Attorney General, attorney for respondent. Cause ordered submitted.
- A086352 The People,
 v.
 Michael Anthony Souza.
Cause called and argued by Philip Morgan Brooks, counsel for appellant, and Christina Kuo, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A089867 Elva Peterson,
 v.
 St. Mary's Medical Center.
Cause called and argued by Curtis G. Oler, counsel for appellant, and Stephen W. Parrish, counsel for respondent. Cause ordered submitted.
- A089580 Edward Beck, et al.,
 v.
 Chicago Title Company, et al.
Cause called and argued by James Wagstaffe, counsel for appellants; Ben I. Hamburg, counsel for respondent Chicago Title Company; James D. Holden, counsel for respondent Old Republic Title Company; and Cary L. Dictor, counsel for respondent Commonwealth Land Title Company. Glenn D. Kabanuck, Lewis J. Soffer, and Timothy B. McCormick appeared for additional respondents but did not argue. Cause ordered submitted.

Court adjourned.

Friday, September 15, 2000

Division Three

A084561 -- Ellen Ashdown v. Ameron International Corporation.

The Court: Pursuant to California Rules of Court, rules 976(b) and 976.1, the opinion in the above entitled matter filed on August 17, 2000, is hereby certified for publication with the exception of the part entitled, "Timing of Hearing on Summary Judgment Motion." McGuiness, P.J.

A088494 -- Tenderloin Housing Clinic, Inc. v. Astoria Hotel, Inc.

Order denying Petition for Rehearing and Modifying Opinion. [No change in the Judgment] By the Court: Respondent's petition for rehearing is denied. It is ordered that the opinion filed herein on August 18, 2000, be modified to add the following paragraph at the end of footnote 3: (SEE ORDER). There is no change in the judgement. McGuiness, P.J. (Certified for Publication.)

Monday, September 18, 2000

Division One

A089826 -- Bureau for Private Postsecondary and Vocational Education et al. v. Columbia Pacific University et al.

The order is affirmed. CPU shall cease operations within 5 days of the issuance of the remittitur. CPU shall pay the assessed civil penalties within 30 days of the issuance of the remittitur. The case is remanded for the limited purpose of resetting the dates for compliance with the remaining subjects of the court's order, including student notices of entitlement to tuition refunds and filing of a status report. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A086536 -- The People v. Michael Dixon.

The judgment is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A085506 -- Denise Hale et al. v. Prentis Cobb Hale, III.

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A090259 -- Kenneth Heisler, et al. v. Michael Wiegner, Sr.

The injunction is modified to provide that appellant is not to permit persons he knows to be convicted felons, persons charged with felonies, or persons dealing in the illicit drug trade or growing marijuana, to rent, lease, or otherwise be on the property. In all other respects, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A086251 -- Victoria King et al. v. Alta Bates Medical Center.

The judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

A090074 -- Mary O'Toole v. San Mateo County General Hospital et al.

The judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

Monday, September 18, 2000 (continued)

A086352 -- The People v. Michael Souza.

The judgment of conviction is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A088909 -- The People v. Lee Randolph Stewart.

The judgment is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Two

A087805 -- California-Nevada Conference of the United Methodist Church, et al. v. John Jones, et al.

The cause is remanded to the trial court with directions to modify paragraph 8 of its injunction in the manner specified in Part III, B, above; in all other respects, the order appealed from is affirmed. The parties are to bear their own costs on appeal. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A088685 -- The People v. Leonard Jenkins.

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A089271 -- Estate of John Alexander Clark, Deceased.

The order denying McDowell's motion to vacate the order confirming the sale is affirmed. Reardon, J. We Concur: Hanlon, P.J., Poché, J. (Not for Publication.)

Monday, September 18, 2000

Division Five

A086336 -- In re Joseph F., a Person Coming Under the Juvenile Court Law. The People v. Joseph F.

By the Court: Petitioner Joseph F.'s petition for rehearing is granted. The Parties are requested to submit supplemental briefing on the following issues: (SEE ORDER). The parties shall submit simultaneous letter briefs limited to five double-spaced pages no later than Friday, October 6, 2000. Jones, P.J.

A091775 and A092257 -- The People v. Robert Angelo Pissagrani.

By the Court: Respondent's motion, filed herein on September 15, 2000, to consolidate A091775 and A092257 is granted. The appeals are consolidated for the purposes of briefing, oral argument and decision. All further filings will be in appeal number A091775, but should reference both appeal numbers on the front of the document or brief. Defendant's opening brief shall be served and filed in this court on or before October 26, 2000. Jones, P.J.

Tuesday, September 19, 2000

Division One

A089580 -- Edward W. Beck et al. v. Chicago Title Company et al.

In light of the documents filed with the trial court in this action, and considering the allegations of the complaint as to Goldworthy's fiduciary duty as appellants' authorized agent, we conclude that the trial court properly determined the motions by the various title companies. The title companies faithfully carried out the explicit written instructions of appellants' authorized agent Goldworthy. We affirm the summary judgment in favor of Chicago Title. We affirm the judgments entered on the demurrers of Fidelity National Title Insurance Company, American Title Insurance Company and Transwestern Title Company. We affirm the judgment on the pleadings in favor of Commonwealth Land Title Company. We deem the order sustaining the demurrer of Placer Title Company and the order granting judgment on the pleadings in favor of Old Republic Title Company to incorporate judgments of dismissal and thus interpret appellants' notice of appeal as applying to such dismissals and affirm. We affirm the judgments in favor of all title company respondents. Finally, we affirm the order denying reconsideration and the order denying appellants' motion to compel and assessing sanctions. Respondents are entitled to costs on appeal. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A086207 -- In re Joseph R., et al., Persons Coming Under the Juvenile Court Law.

By the Court: It is ordered that the opinion filed herein on August 31, 2000, be modified as follows: (SEE ORDER). There is no change in the judgment. The petition for rehearing is denied. Strankman, P.J. (Not for Publication.)

Division Two

A078075 -- City and County of San Francisco v. Carolyn Daley.

A084881 -- Ron Daley v. City and County of San Francisco

The judgment of the trial court is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Tuesday, September 19, 2000 (continued)

A087283 -- The People v. Carmon Warren.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A089842 -- Stanley Richard Miller v. City and County of San Francisco, et al.

By the Court: Since this court's August 28, 2000 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. McGuiness, P.J.

A091292 -- The People v. Jamie James Royal.

In sum, we find no arguable issues for review, pursuant to *People v. Wende, supra*, 25 Cal.3d 436. The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A089983 -- Brent Sellick v. Sheedy Drayage Company.

The judgment is affirmed. Appellant to bear costs of appeal. McGuiness, P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

A089792 -- The People v. William Timothy Toyer.

The judgment is affirmed. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A088399 --The People v. Willie Lee Harris.

The judgment is modified to show that defendant is entitled to 104 days of conduct credits pursuant to Penal Code section 4019. As so modified, the judgment of conviction is affirmed. The clerk of the trial court shall prepare an amended abstract of judgment reflecting this modification, and shall forward a certified copy to the Department of Corrections. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Wednesday, September 20, 2000

Division One

A088014 -- The Big Creek Timber Company v. Sempervirens Funds, Inc.

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

A086147 -- H. Lee Evans v. Reliance National Insurance Company.

The judgments are affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

A087308 -- Ilene Listrom v. Columbia-San Leandro Hospital et al.

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A089867 -- Elva Peterson v. St. Mary's Medical Center et al.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Three

A089045 -- The People v. Joseph Gray.

The judgment is modified to strike the court's imposition of two one-year enhancements under section 667.5, subdivision (b), thereby reducing defendant's total sentence to four years. The trial court is directed to prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections. As modified, the judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, September 20, 2000 (continued)

Division Four

A087654 -- Wesley Burwell, Jr. v. Bruce MacDonald et al.

The judgment is affirmed. Hanlon, P.J. We Concur: Poché, J., Sepulveda, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, September 20, 2000

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Haerle, Acting P. J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

- A086104 The People,
 v.
 Anthony T. Davis
Cause called and argued by Donald Tickle, counsel for appellant and Sharon Birenbaum, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A089026 George C. Bourekas
 v.
 Chuck Quackenbush, etc., et al.
Cause called and argued by Edward Holtz, counsel for appellant and Randall Borcharding, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A086896 Estate of Theodore Schmidt, Deceased
 Raymond H. Levy, et al.
 v.
 Office of the Public Administrator
Cause called and argued by Michael Levy, counsel for appellant and Michael Bassi, counsel for respondent. Cause ordered submitted.
- A087791 Estate of John Anthony Hancock, Deceased
 Jim Nord
 v.
 Carolyn Ann Hancock
Cause called and argued (telephonically) by Michael Hoff, counsel for appellant and Gerald N. Hill, counsel for respondent. Cause ordered submitted.

Thursday, September 21, 2000

Division One

A088756 & A088947 -- David M. Perry v. Mellon Bank Corporation et al.

We reverse the judgment and reverse the order granting summary judgment as it applies to the second and third causes of action and affirm the order as it applies to the first and fourth causes of action and we direct entry of a modified order granting and denying leave to file a second amended complaint in accordance with this opinion. Costs are awarded to appellant. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

A087120 -- Edna Kugelman et al. v. John Crane, Inc.

The judgment is affirmed. Appellants are to pay costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A086652 -- The People v. Charles Edward Young.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A085595 -- The People v. Brian Tracey Hill.

Reversed with respect to the finding that appellant utilized a deadly weapon in commission of the battery. We hereby strike the one-year sentence enhancement based upon the deadly weapon finding and order the clerk of the court to amend the record, including the abstract of judgment, to reflect our decision. The conviction and sentence is affirmed in all other respects. Walker, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Thursday, September 21, 2000 (continued)

A086867 -- The People v. Kay Renee Morris.

Affirmed. Walker, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Division Four

A087891 -- The People v. Gerald Eugene Parmarter.

Order Modifying Opinion and Denying Rehearing [no change in judgment]

By the Court: It is ordered that the opinion filed herein on August 29, 2000, be modified as follows: (SEE ORDER). The modification does not effect a change in the judgment. The request to augment the record is granted. The petition for rehearing is denied. Poché, Acting P.J. (Not for Publication.)

Division Five

A088151 -- The People v. Eric Lewis Smith.

The order of the trial court is affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, September 22, 2000

Division One

A092432 -- General Motors Corporation, et al. v. The Superior Court of San Francisco County, City and County of San Francisco, R.P.I.

The Court:* Let a peremptory writ of mandate issue commanding respondent San Francisco County Superior Court to set aside its orders filed September 7, 2000, and to enter new orders denying the motions. In all other respects, the petition is denied.

This opinion is final as to this Court immediately. (Cal. Rules of Court, rule 24(d).) Pending issuance of the remittitur, the orders directing preparation of clerk's transcripts are stayed. The Clerk of this Court is directed to file copies of this opinion in Nos. A091914 and A091910. The parties shall bear their own costs. (Not for Publication.)

*Before Stein, Acting P.J., Swager, J., and Marchiano, J.

A087677 -- The People v. Thomas David Waiton.

By the Court: The petition for rehearing is denied. Strankman, P.J.

Division Two

A087217 -- Sara Young v. Max Smith.

This matter is remanded to the trial court with instructions to modify the judgment in the following manner: (1) the \$250,000 award for noneconomic damages shall be deleted; (2) the economic damages award shall be decreased by \$23,304.69; (3) the prejudgment interest award shall be recalculated to reflect an interest rate of seven percent per annum. In all other respects, the judgment is affirmed. Appellant is awarded costs on appeal. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A087439 -- In re Jason C., a Person Coming Under the Juvenile Court Law.

The order appealed from is reversed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

September 22, 2000 (continued)

A090020 -- In re Justin N., a Person Coming Under the Juvenile Court Law.

The appeal is dismissed pursuant to California Rules of Court, rule 38. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A086838, A088367 -- Mechel Tirado et al. v. City of Alameda.

In opposing respondent's motion for summary judgment, appellants failed to present evidence sufficient to create any triable issue of material fact. The trial court therefore properly entered summary judgment for respondent. We affirm the judgment and the award of costs to respondent as prevailing party. Respondent shall recover its costs on appeal. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A085733 -- The People v. Robert Derwin Avery.

The trial court's finding that appellant suffered a Texas prior strike conviction and a prior serious felony is vacated. The cause is remanded to the trial court for resentencing. If the district attorney's office elects to retry the strike allegations (*Monge v. California* (1998) 524 U.S. 721, 734; *People v. Monge* (1997) 16 Cal.4th 826, 845; *People v. Cortez* (1999) 73 Cal.App.4th 276, 284 & fn. 7), it must do so within 60 days of the filing of our remittitur. Hanlon, P.J. We Concur: Poché, J., Sepulveda, J. (Certified for Publication.)

A089363 -- The People v. Orlando Steven Rael.

The judgment is affirmed. Hanlon, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Monday, September 25, 2000

Division One

A090334 -- Alan D. Liker v. Angel View Crippled Children's Foundation.

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, P.J.

A087479 -- The People v. Jose Zuniga.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

A092352 -- In re Daniel Burgie, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Haerle, Acting P.J.

A089439 -- The People v. Curtis Roy Daniels.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvoilo, J. (Not for Publication.)

A087791 -- Estate of John Anthony Hancock, Deceased.

The order is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvoilo, J. (Not for Publication.)

A089001 -- The People v. Valeriano Cruz Paz.

We affirm. Haerle, J. We Concur: Kline, P.J., Ruvoilo, J. (Not for Publication.)

Wednesday, September 25, 2000 (continued)

Division Three

A088564 -- The People v. Robert Earl Johnson.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A089619 -- Sierra Club et al. v. California Department of Forestry & Fire Protection, Georgia Pacific West Corporation, R.P.I.

The motion of real parties in interest to dismiss the appeal is granted. The appeal is dismissed as moot. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A087295 -- The People v. Tyrone Johnson.

The judgment of conviction is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A085989 -- Babak Naficy v. Hastings College of the Law, et al.

The judgment is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A084968 -- Northern Insurance Company of New York v. Superior National Insurance Company. The judgment is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

Tuesday, September 26. 2000

Division One

A090615 - The People v. Fleming Smith.

The judgment is affirmed. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

Division Two

A092513 -- Charles Chatman v. The Superior Court of San Mateo County, The People of the State of California, R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied. Petitioner has failed to provide an adequate record for review. (*Sherwood v. Superior Court* (1979) 24 Cal.3d 183, and California Rules of Court, rule 56, subdivision (c).) Haerle, Acting P. J.

A092366 -- In re Elvis D. Hubbard, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Haerle, Acting P. J.

A090162 -- Planned Parenthood Golden Gate v. The Superior Court of San Mateo County, Rossi Foti et al., R.P.I.

By the Court: It is ordered that the opinion filed herein on August 28, 2000, be modified to include the list of counsels as follows: (SEE ORDER). This modification does not effect a change in the judgment. Kline, P. J. (Certified for Publication.)

Division Three

A085798 -- In re the Marriage of Fenty and David Shore.

The order is affirmed. Corrigan, J. We concur: McGuinness, P. J., Walker, J. (Not for Publication.)

A085328 -- The People v. Kevin J. Halphen.

The judgment is affirmed. Corrigan, Acting P. J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

Tuesday, September 26, 2000 (continued)

A089030, A091194 -- George Hoffberg v. Robert Copeland et al.

Respondents' motions to recall and retransmit the remittitur in A089030 and to dismiss the appeal in A091194 are denied.

Appellant's opening brief having been filed on July 18, 2000, respondents shall have 30 days from the date of this order to file their respondents' brief. Appellant shall have 20 days from the date respondents' brief is filed to file a reply brief. Parrilli, J. We Concur: McGuiness, P.J. Corrigan, J. (Not for Publication.)

Division Four

A088445 -- The People v. Carlton Bryan McCoy.

The order of recommitment is affirmed. Hanlon, P.J. We Concur: Poché, J., Reardon, J. (Not for Publication.)

A088432 -- The People v. Carl Phillips.

A091739 -- In re Carl Phillips on Habeas Corpus.

The judgment is affirmed. The petition is denied. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, September 26, 2000

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Poche, Acting P.J. and Sepulveda, J.; Channing Hoo, Deputy Clerk. Each counsel again waived Justice Hanlon's presence on the bench.

A089638 People
 v.
 Lativis R.
Cause called. Richard Doctoroff teleargued for appellant Lativis R. Matthew Boyle argued for respondent. Cause submitted.

A90472 Deanna R. Rutter
 v.
 Superior Court, San Mateo County
Cause called. Lorraine Walsh argued for petitioner Rutter. Paul Vallone argued for respondent. Cause submitted.

A085065 People
 v.
 Juan Miguel Cisneros
Cause called. Charles Dell'Ario argued for appellant Cisneros. Susan Lee argued for respondent. Cause submitted.

At this point, the court reconstitutes itself to include Reardon, J. and Sepulveda, J.

A088022 Crystal Tunstall
 v.
 UC at San Francisco
Cause called. Hunter Pyle argued for appellant Tunstall. Susan Kumagai argued for respondent. Cause submitted.

The Court adjourned at 2:30 p.m.

Wednesday, September 27, 2000

Division One

**A080224 -- Marybeth Armendariz et al. v. Foundation Health
Psychcare Services, Inc.**

By the Court: Pursuant to the decision and judgment of the Supreme Court (S075942, August 24, 2000) in the above-entitled cause, the judgment of the trial court is affirmed. Costs are awarded to respondents. Strankman, P.J. (Not for Publication.)

Division Two

A089949 -- The People v. Juan C.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Five

A091049 -- The People v. Brian Michael Calaio.

The order permanently revoking appellant's probation and executing his previously suspended state prison term is affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088849 -- Dorothy W. Plessinger v. The Ryness Company,
A089073 -- Dorothy W. Plessinger v. Greater Bay Hayward Homes,
LLC.**

The orders of the trial court, denying the motion of Ryness to compel arbitration, and dismissing the action as to Greater Bay, are affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

September 27, 2000

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuinness, P.J., Corrigan, J., Parrilli, J., Walker, J. and I. Calanoc, Deputy Clerk.

- A091305 Jerry Brown, Mayor of the City of Oakland,
 v.
 Fair Political Practices Commission.
Cause called and argued by Lowell Finley, counsel for petitioner, and Deborah Allison, counsel for respondent. Cause ordered submitted.
- A086354 Tina Marie Garcia, et al.,
 v.
 City and County of San Francisco, et al.
Cause called and argued by Bruce Kapsack, counsel for appellant, and Hajime Tada, counsel for respondent. Cause ordered submitted.
- A084037 Carpenters Health and Welfare Trust
 Fund for California, et al.,
 v.
 Rodney McCracken, et al.
Cause called and argued by James Watson, counsel for appellant, and Lawrence Knapp, counsel for respondent. Cause ordered submitted.
- A088809 Tong Park,
 v.
 County of San Mateo.
Cause called and argued by appellant pro per Tong Park, and Peter Gelniak, counsel for respondent. Cause ordered submitted. McGuinness, P.J. left the bench after this case.
- A088016 Tong Park,
 v.
 County of San Mateo.
Cause called and argued by appellant pro per Tong Park and Arlene Rosen, counsel for respondent. Cause ordered submitted.

A088645 Hogan Sung,
v.
S. F. Animal Care & Control, et al.
Cause called and argued by Geoffrey Rotwein, counsel for appellant, and Deputy
City Attorney Margaret Baumgartner, counsel for respondent. Cause ordered
submitted.

A087639 Raza Iqbal,
v.
The Clift Hotel Management, Inc.
Cause called and argued by Tesfaye Tsadik, counsel for appellant, and Shea
Lukacsko, counsel for respondent who argued via teleconference. Cause ordered
submitted.

A090336 In Re John Paul Jacobs on Habeas Corpus.
A086653 The People,
v.
John Paul Jacobs.
Cause called and argued by Carol Strickman, counsel for appellant, and Deputy
Attorney General Michael Banister, counsel for respondent. Cause ordered
submitted.

COURT ADJOURNED.

Thursday, September 28, 2000

Division Two

A089213 - The People v. Darrell L. Montgomery.

This case is remanded to the sentencing court to correct the amount of presentence credits awarded to Montgomery. In all other respects, the judgment is affirmed. Haerle, J., Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Thursday, September 28, 2000 (continued)

Division Three

A088016 -- Tong Park v. County of San Mateo et al.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J. , Walker, J. (Not for Publication.)

A086313 -- Congregation Beth Israel-Judea v. George R. Karadanis et al.

The judgment granting rescission of the lease agreement is reversed. The order granting summary adjudication of the cross-complaint's causes of action for fraud is affirmed. Costs to plaintiff and appellant Congregation Beth Israel-Judea. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

A087648 & A088979 -- In re Davina G., a Person Coming Under the Juvenile Court Law.

Social Services Agency v. Raymond L.

The orders of the trial court are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A086354 -- Tina Marie Garcia et al. v. City and County of San Francisco et al.

Defendants adduced evidence on summary judgment both that their acts or omissions did not cause Mr. Garcia's death and that plaintiffs could not establish causation. The burden then shifted to plaintiffs to show the existence of a triable issue of fact. Because plaintiffs failed to respond with competent evidence demonstrating the existence of a triable issue of material fact, the trial court properly granted summary judgment on the basis of the record before it. The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Thursday, September 28, 2000 (continued)

A088091 -- The People v. Paul George.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

A088654 -- Hogan Sung v. San Francisco Animal Care and Control et al.

The orders and judgment are affirmed. The writ of supersedeas is vacated. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

Division Four

A090879 -- The People v. Bobby Joe Green.

The judgment is affirmed. Sepulveda, J. We Concur: Poché, Acting P.J., Reardon, J. (Not for Publication.)

A080542 -- The People v. Christine Loyd.

The judgment is affirmed. Sepulveda, J. (Certified for Partial Publication.*) (See concurring opinion by Hanlon, P.J.) (See dissenting opinion by Poché, J.)

*Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts I, III, IV and V.

Division Five

A087894 -- The People v. Scott Allen Duvall.

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, September 28, 2000 (continued)

A088271 -- John Clifton Elstead v. Law Offices of Walker & Durham et al.

The judgment is reversed. Costs are awarded to appellant. Rivera, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A089712 -- The People v. Galen Jackson.

The judgment is affirmed. Rivera, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A089719 -- The People v. Roy Tobler.

The judgment is affirmed. Rivera, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Thursday, September 28, 2000

The Court met at 9:00 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

- A091428 Marisel R.
 v.
 Superior Court
 Social Services Agency, et al.
 Cause called and argued by Lisa R. Campbell, Deputy Public Defender, counsel for petitioner and Marke Estis, Deputy County Counsel, counsel for real party in interest. Cause ordered submitted.
- A083986 The People
 v.
 Thomas Wheeler
 Cause called and argued by John McCabe, counsel for appellant and Gerald Engler, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A087298 Suhair Shahwan
 v.
 Gheorghe M. Vlad, et al.
 Cause called and argued by Merrill Emerick, counsel for appellant and Stephen Ciotoli, counsel for respondents. Cause ordered submitted.
- A087820 Marguerite Treeweek
 v.
 The City of Napa
 Cause called and argued by Roberta Brooks, counsel for appellant and David C. Jones, counsel for respondent. Cause ordered submitted.

Friday, September 29, 2000

Division One

A087915 -- The People v. Donald Alvin Sherwood.

The instructions given to the jury were not erroneous, and would have been harmless beyond a reasonable doubt in any event. Appellant failed to demonstrate ineffective assistance of counsel. The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A088459 -- Cherie DuVal v. Paul W. Stewart et al.

We affirm the trial court's judgment. Ruvolo, J. I concur: Lambden, J. (Not for Publication.) (See dissenting opinion by Haerle, Acting P.J.)

A087797 -- Memorial Park Associates v. Learinza Morris.

The appeal is dismissed. Costs to Memorial Park. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A091428 -- In re Mariangely O. et al., Persons Coming Under the Juvenile Court Law.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888; § 366.26, subd. (1) [precluding further challenge to these orders by petitioner in any subsequent appeal].) Our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(d).) Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Friday, September 29, 2000 (continued)

A092163 -- In re Lisa W., a Person Coming Under the Juvenile Court Law.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888.) Petitioner is barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section 366.26. (See § 366.26, subds. (b)(1) & (b)(2).) Since the permanency planning hearing is set for October 31, 2000, this opinion is final as to this court forthwith. (Rule 24(d).) Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A089056 -- In re Ariel B., a Person Coming Under the Juvenile Court Law.

Affirmed. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A084037 -- Carpenters Health & Welfare Trust Fund for California et al. v. Rodney McCracken et al.

The judgment is reversed, and the case is remanded to the trial court with directions to overrule the McCrackens' demurrer. CHWT shall recover its costs on appeal. McGuiness, P. J. We concur: Corrigan, J., Parrilli, J. (Certified for Publication.)

A090949 -- In re the Marriage of Kristen and Randy Mainwaring.

The appeal is dismissed. The parties are to bear their own costs on appeal. Corrigan, J. We concur: McGuiness, P. J., Walker, J. (Not for Publication.)

A087900 -- The People v. Brian Fite.

Affirmed. Walker, J. We concur: McGuiness, P. J., Parrilli, J. (Not for Publication.)

Friday, September 29, 2000 (continued)

Division Three (continued)

A087639 -- Raza Iqbal v. The Clift Hotel Management, Inc.

We hold that appellant sustained his burden on summary judgment of presenting substantial responsive evidence tending to show that respondent's stated reasons for declining to hire him were mere pretext, thereby raising an inference that the true motive was discriminatory. Although we reverse the summary judgment, we also hold that the trial court properly concluded appellant had not met his burden of presenting evidence to create triable issues of material fact on his claims for intentional infliction of emotional distress and punitive damages. We reverse and remand for further proceedings on appellant's claim of discrimination under FEHA and public policy. Appellant shall recover his costs on appeal. Walker, J. We concur: Corrigan, Acting P. J., Parrilli, J. (Not for Publication.)

A089925 -- William C. Luks a Minor, etc. v. George Luks et al.

The judgment is reversed. The case is remanded for a hearing on the propriety of ordering appellants to pay support under sections 3951, subdivision (b), and 4000. If the trial court determines that appellants should pay support, it should fix a support figure which takes into consideration William's needs and appellants' ability to pay.

One final matter not addressed by the parties requires our attention. The superior court file does not include an order appointing Daniel as William's guardian ad litem. Such an order is a prerequisite to Daniel's acting in that capacity. (Code Civ. Proc., §§ 372, 373; 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 66, p. 122.) We further observe that Daniel was not competent to file a complaint or otherwise personally represent his brother in any proceedings before the superior court. A guardian ad litem must employ an attorney. (4 Witkin, Cal. Procedure, *supra*, § 68, pp. 124-125.) On remand, if Daniel seeks appointment and is appointed as William's guardian ad litem, the court should ensure that he is represented by counsel at all stages of the proceedings.

In the interests of justice, each side to bear its own costs of appeal. McGuiness, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A084794 -- The People v. Fred S. Mott

The judgment is affirmed. McGuiness, P. J. We concur: Corrigan, J., Walker, J. (Not for Publication.)

Friday, September 29, 2000 (continued)

Division Three (continued)

A088809 -- Tong Park v. County of San Mateo et al.

The trial court's order imposing sanctions on appellant is vacated, solely on procedural grounds. Each party shall bear its own costs on appeal. Corrigan, J. We concur: McGuinness, P. J., Parrilli, J. (Not for Publication.)

Division Four

**A083792 -- Perrin Edgerton et al. v. State Personnel Board;
Department of Transportation, R.P.I.**

The judgments are affirmed. The matter is remanded to the trial court for a determination of the amount of attorney fees to be awarded IUOE on this appeal. Hanlon, P. J. We concur: Poché, J., Reardon, J. (Certified for Publication.)

**A088636 -- In re Jordan R., a Person Coming Under the Juvenile
Court Law.**

The order terminating parental rights is affirmed. Hanlon, P. J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A087476 -- The People v. Reuben Johnson.

**A087043 -- The People v. The Superior Court of San Francisco;
Reuben Johnson, R.P.I.**

In the appeal (A087476), the order of the superior court is reversed.

In the mandate proceeding (A087043), the alternative writ previously issued is discharged. Having resolved the issues raised therein in the context of the related appeal, the petition for writ of mandate is dismissed as moot. Sepulveda, J. We concur: Poché, Acting P.J., Reardon, J. (Not for Publication.)

A089478 -- Leo Giorgetti et al. v. Bankamerica Corporation et al.

The order of dismissal is reversed. Poché, Acting P. J.. We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Friday, September 29, 2000 (continued)

Division Four (continued)

**A091174 -- Michael Sheean v. The Superior Court of Marin County;
Joseph Sheean, R.P.I.**

We conclude that a peremptory writ should issue in the first instance. The issue presented concerns a well-settled area of the law and no purpose could reasonably be served by plenary consideration of the issue. We notified the parties that we might issue a peremptory writ in the first instance, and solicited and received opposition from real party in interest. (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

Let a peremptory writ of mandate issue commanding the Superior Court of Marin County, in *Sheean v. Sheean* (991364), to modify its order of April 21, 2000, by vacating its order requiring plaintiff to comply with defendant's request for production of documents, number 9.

Defendant/real party in interest shall bear the costs of this proceeding.

The stay previously imposed shall remain in effect until the remittitur issues. (Cal. Rules of Court, rule 25(a).) This opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Hanlon, P. J. We concur: Poché, J., Reardon, J. (Not for Publication.)